IN THE HIGH COURT OF JUDICATURE AT BOMBAY

TESTAMENTARY AND INTESTATE JURISDICTION

NOTICE OF MOTION NO.8 OF 2007

IN

TESTAMENTARY SUIT NO12 OF 2005

IN

PETITION NO.769 OF 2004

Tarun Harshi Motta. ..Petitioner/Plaintiff

vs.

Lila Valiram Malani. ...Caveator/Defendant.

Mr.Shiralkar i/b. Shiralkar & Co., for Plaintiff.

Mr.Snehal Shah i/b. M/s.Dhru & Co., for Defendant.

CORAM: D.K.DESHMUKH,J.

DATED: 1st March, 2007.

P.C.:-

1. This notice of motion has been taken out by the petitioner in a testamentary suit for expediting the hearing of the suit. Admittedly, in the suit, chamber summons no.15 of 2005 has been

taken out and the Court has passed the following order on 9.6.2005:-

> " The present Chamber summons is taken out for direction under Rule 404 of the High Court (O.S.) Rules. Parties are directed to complete discovery and inspection within 4 weeks from today. Parties to file affidavit of documents and exchange compilation within the aforesaid period. Office is directed to place the matter for hearing and final disposal thereafter. Delay in taking out chamber summons is condoned. Chamber summons is disposed of accordingly."

2. Admitted position between the parties is that this order passed by the Court has not been complied with by both the parties. What is most surprising is that though the petitioner has filed this application for expediting the hearing of the suit, in the affidavit filed in support of this notice of motion the order dated 9.6.2005 has been referred to, but whether the directions issued by that order has been complied with by the petitioner or not, has not been stated. When I asked the learned Counsel appearing for petitioner whether he has complied with the directions given by order dated 9.6.2005, he stated that they have not been complied with. What is pertinent to note is that the Court has already directed the office to place the matter for hearing and final disposal immediately after the parties complying with the directions given by the court. It is, thus, obvious that this

notice of motion has been taken out by the petitioner in most casual manner. Taking out such a proceeding, apart from wasting Court's time, also creates various difficulties for the office of this Court which is already overworked. In my opinion, therefore, merely rejecting the notice of motion is not sufficient, but exemplary cost will have to be imposed on the petitioner for taking out such a frivolous notice of motion in such a casual manner.

3. Notice of motion is, therefore, disposed of. The petitioner/plaintiff is directed to pay Rs.10,000/- as and by way of cost of this notice of motion to the Defendant. Payment of cost to be made within a period of two weeks from today.